NELSON CUNDANGAN, PETITIONER, VS.THE COMMISSION ON ELECTIONS AND CELESTINO V. CHUA, RESPONDENTS.

G.R. NO. 174392. August 28, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for certiorari assails the Resolution[1] dated October 25, 2005 of the Commission on Elections (COMELEC) First Division and the Resolution[2] dated August 18, 2006 of the COMELEC En Banc in EAC No. 174-2003. The Resolution dated October 25, 2005 reversed the trial court's Decision dated September 26, 2003, while the Resolution dated August 18, 2006 denied Cundangan's Motion for Reconsideration and affirmed with modification the challenged Resolution dated October 25, 2005.

The antecedent facts are as follows:

Cundangan and Chua were candidates for Punong Barangay for Barangay Sumilang, Pasig City in the July 15, 2002 Synchronized Barangay and Sangguniang Kabataan Elections. After the canvass of votes, Cundangan was proclaimed as the duly elected Punong Barangay.

On July 23, 2002, Chua filed an election protest which impugned the results of the canvass in all the 19 precincts of said barangay.

After the revision proceedings were concluded, the trial court rendered a Decision dated September 26, 2003, affirming the proclamation of Cundangan.

Unsatisfied with the decision of the trial court, Chua filed on October 14, 2003, an appeal with the COMELEC First Division. In its Resolution dated October 25, 2005, the COMELEC First Division reversed the trial court's Decision dated September 26, 2003, and accordingly declared Chua as the duly elected Punong Barangay of Barangay Sumilang, Pasig City.

On November 2, 2005, Cundangan moved for a reconsideration of the said Resolution. However, the COMELEC En Banc, in its Resolution dated August 18, 2006, denied Cundangan's Motion for Reconsideration and affirmed the challenged Resolution of the COMELEC First Division.

Hence, the instant petition raising issues on the following grounds:

> I.
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> THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF AND EXCESS OF JURISDICTION IN PROMULGATING ITS ASSAILED RESOLUTION (EN BANC) WHEN THE TOTAL NUMBER OF VOTES FROM UNCONTESTED BALLOTS IS ENTIRELY DIFFERENT AND CONTRARY TO THE DECISION OF THE TRIAL COURT AND IN THE RESOLUTION OF THE FIRST DIVISION ITSELF.
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> II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF AND EXCESS OF JURISDICTION IN PROMULGATING ITS ASSAILED RESOLUTION [(EN BANC)] WHEN THE COMELEC INVALIDATED VALID BALLOTS OF CUNDANGAN AS FOLLOWS:

- GROUPS/SETS OF BALLOTS TOTALLING EIGHTY SEVEN (87) VALID BALLOTS OF CUNDANGAN ALLEGEDLY AS WRITTEN BY ONE PERSON (WBOP) IN THE FOLLOWING PRECINCTS AND EXHIBITS NUMBERS, TO WIT:

a.1. Precinct No. 499A/499A-1 -- C-1 to C-3 (2 ballots);
a.2. Precinct No. 503A/504A -- C-15 to C-16, C-30 to C-33 (4 ballots);
a.3. Precinct 504A-1/508A -- C-4 to C-7 (4 ballots);
a.4. Precinct No. 505A/506A -- C-1 to C-15 (15 ballots);
a.5. Precinct No. 507A/507A-1 -- C-1 to C-13 (13 ballots);
a.6. Precinct No. 510A -- C-1 to C-25 (25 ballots);
a.7. Precinct No. 510A-1/512A -- C-1 to C-16 (16 ballots);
a.8. Precinct No. 514A-1/515A -- C-1 to C-4, C-13 to C-14 (6 ballots);
a.9. Precinct No. 518A/518A-1 -- E and F (2 ballots).

- SINGLE BALLOTS TOTALLING NINETEEN (19) VALID BALLOTS OF CUNDANGAN ALLEGEDLY AS WRITTEN BY TWO PERSONS (WBTP) IN THE FOLLOWING PRECINCTS AND EXHIBITS NUMBERS, TO WIT:

b.1. Precinct No. 498A/500A -- C-3 to C-15, C-17 to C-19 (16 ballots);
b.2. Precinct No. 504A/508A -- C-1 (1 ballot);
b.3. Precinct No. 510A -- C-45 and C-46 (2 ballots).

- THREE (3) VALID BALLOTS OF CUNDANGAN ALLEGEDLY AS MARKED BALLOTS (MB) IN THE FOLLOWING PRECINCTS AND EXHIBITS [NUMBERS], TO WIT:

c.1. Precinct No. 510A -- C-47 (1 ballot);
c.2. Precinct No. 510A-1/512A -- C-24 and C-25 (2 ballots).

III.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF AND EXCESS OF JURISDICTION IN PROMULGATING ITS ASSAILED RESOLUTION (EN BANC) WHEN IT VALIDATED INVALID BALLOTS OF CHUA AS FOLLOWS:

- GROUPS/SETS OF BALLOTS [TOTALLING] EIGHTY-NINE (89) INVALID BALLOTS OF CHUA AS WRITTEN BY ONE PERSON (WBOP), IN THE FOLLOWING PRECINCTS AND EXHIBIT [NUMBERS]:

a.1. Precinct No. 498A/500A -- N-1 & N-2, N-3 & N-4, N-6 & N-7, N-14 & N-15, N-26 to N-28, N-31 to N-34, N-36 & N-37, N-45, N-46, N-50 & N-51 (21 ballots);
a.2. Precinct No. 499A/499A-1 -- N-1 to N-4, N-9, N-10, N-13, N-14, N-21 and N-22 (10 ballots);
a.3. [Precinct No.] 503A/504A -- N-55 and N-56 (2 ballots);
a.4. [Precinct No.] 504A-1/508A -- N-1 to N-3, N-4 & N-5, N-20, N-23, N-27, to N-29, N-51 & N-52 (12 ballots);
a.5. [Precinct No.] 507A/507A-1 -- N-2 to N-5, N-8 to N-13 (10 ballots);
a.6. [Precinct No.] 509A -- N-3 to N-5 (3 ballots);
a.7. [Precinct No.] 510A -- N-27, N-28, N-35 to N-37 (5 ballots);
a.8. [Precinct No.] 516A -- N-20 to N-22 (3 ballots);
a.[9]. [Precinct No.] 517A -- N-29 & N-30 (2 ballots);
a.[10]. [Precinct No.] 518A/518A-1 -- N-1 to N-6, N-11 to N-16, N-19 to N-23 (17 ballots);
a.[11]. [Precinct No.] 519A/520A -- N-30 & N-31 (2 ballots);

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a.[12]. [Precinct No.] 521A/522A -- N-12 & N-13 (2 ballots).

- FOUR (4) INVALID BALLOTS AS MARKED BALLOTS (MB), IN THE FOLLOWING PRECINCT AND EXHIBIT [NUMBERS]:

b.1. [Precinct No.] 510A-1/512A -- N-43 to N-45 and N-49 (4 ballots)[.]

- TWO (2) BALLOTS ADJUDICATED BY [THE] TRIAL COURT AS VALID FOR CUNDANGAN, WHICH HOWEVER, VALIDATED AS CLAIMED BALLOTS FOR CHUA BY THE HONORABLE COMMISSION (FIRST DIVISION), IN THE FOLLOWING PRECINCTS AND EXHIBIT NUMBERS:

c.1. [Precinct No.] 507A/507A-1 -- Exh. 44 (1 ballot); and
c.2. [Precinct No.] 521A/522A -- C-30 (1 ballot).

IV.

THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND EXCESS OF JURISDICTION WHEN IT DID NOT SQUARELY RULE ON THE SERIOUS ISSUE RAISED BY CUNDANGAN REGARDING THE EXISTENCE OF SPURIOUS AND FAKE BALLOTS THAT WERE FOUND DURING THE REVISION OF BALLOTS IN THE TRIAL COURT.[3]

Essentially, the issue is whether there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of COMELEC En Banc when it affirmed the October 25, 2005 Resolution of the COMELEC First Division.

Anent the first ground, Cundangan contends that there is a difference between the number of uncontested ballots stated in the COMELEC En Banc Resolution and that stated in both the COMELEC First Division Resolution and the Decision of the trial court. But as correctly explained by Chua, there was no error in the number of uncontested ballots stated in the impugned COMELEC En Banc Resolution because it accounted for only 17 precincts, unlike in the COMELEC First Division Resolution and the trial court's Decision which accounted for 19 precincts. The COMELEC En Banc excluded from its count the ballots in two precincts, namely, 505A/506A[4] and 510A,[5] after it had determined that a number of ballots in said precincts were tampered.[6]

As for the second ground, Cundangan alleges that the COMELEC erred when it invalidated 87 ballots in his favor for being WBOP; 19 ballots in his favor for being WBTP; and 4 ballots in his favor for being marked ballots.

Cundangan argues that the aforementioned 87 ballots were not WBOP considering that each of them bears a distinctive handwriting and does not appear to be objectionable.[7] For his part, Chua insists that the said ballots were WBOP, pointing out that his revisors had been able to identify the said ballots to have been clearly written by only one hand during the revision proceedings.[8] Citing Erni v. Commission on Elections,[9] Chua likewise avers that evidence aliunde is not necessary for the COMELEC to determine whether the questioned ballots were written by one hand.[10]

Arguing that the aforesaid 19 ballots were not WBTP, Cundangan cites Section 211 (22)[11] of the Omnibus Election Code and Ong v. Commission on Elections,[12] in which we ruled that "the appearance of print and script writings in a single ballot does not necessarily imply that two persons wrote the ballot. The strokes of print and script handwriting would naturally differ but would not automatically mean that two persons prepared the same . . . . In the absence of any deliberate intention to put an identification mark, the ballots must not be rejected."[13]

Chua counters by saying that his revisors identified that the questioned ballots had been written by two persons during the revision proceedings.[14] He likewise cites Section 211 (23)[15] of the Omnibus Election Code and

Protacio v. De Leon,[16] in which we invalidated a ballot for having been written by two hands, because the writing of the names of some of the candidates therein bore distinct and marked dissimilarities from the rest of the handwritings used.[17]

As to the four ballots[18] which were considered marked, Cundangan contends that the COMELEC's ruling below was erroneous.

PRECINCT NO.	EXHIBIT NO.	RULING
510A C-47 (1 ballot)		The name "Boboy Benito" which was written and repeated in lines 1 to 7 for Kagawads, is a distinguishing mark meant to identify the voter.
510A-1/512-A C-24 and C-25 (2 ballots)		The name "Oyit Santos" written in lines 2-7 for Kagawads and the word "BO" serves as an identification mark.
521-A/522-A C-29 (1 ballot)		The word "Boyer Quijano" written in big letters in such a way that it occupies lines 1 to 7 for Kagawads is evidently intended to identify or mark this ballot.

Cundangan contends that the above ballots are not marked ballots because writing the name of a candidate in big bold letters spanning several lines merely signifies desistance from voting for other candidates and was only for emphasis.[19]

Chua, for his part, maintains that the said ballots were marked and adds that the face of the ballot itself contains a caution to the voter not to place any distinguishing mark that will invalidate the ballot.[20]

We hold that the COMELEC En Banc did not abuse its discretion in invalidating all of the aforesaid contested ballots. In Idulza v. Commission on Elections,[21] we ruled that where the factual findings of a division of the COMELEC, as affirmed by the COMELEC En Banc, are supported by substantial evidence, they are beyond the ken of review by this Court.[22] In the present petition, we have more reason to respect the findings of the COMELEC En Banc with regard to the questioned ballots, considering that the same is consistent not only with the findings of the COMELEC First Division, but also those of the trial court.

It must be stressed that the appreciation of contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. It is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and barangay officials. Consequently, in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings and decisions rendered by the said Commission on matters falling within its competence shall not be interfered with by this Court.[23]

It is worth pointing out that the invalidation of the four above-mentioned marked ballots is in accord with our ruling in Ong v. Commission on Elections,[24] in which we held that big bold letters that occupy all the spaces for the specific position should be invalidated, inasmuch as this evinces an evident intent to mark the ballot.[25]

Anent the third ground, Cundangan argues that the COMELEC En Banc gravely abused its discretion when it validated allegedly invalid ballots in favor of Chua as follows: (1) 89 ballots because they were WBOP; and (2) four ballots because the same were marked ballots. Cundangan likewise assails the alleged validation of two claimed ballots counted in favor of Chua.[26]

As for the 89 ballots allegedly WBOP, Cundangan argues that the same are WBOP because upon perusal of the ballots, the handwritings on these ballots are clearly identical.[27]

As for the four allegedly marked ballots, he contends that the same are indeed marked ballots, considering that the words papag, bangus, and kalabasa were written amidst the names of different candidates for Kagawads, and that the said words are irrelevant, impertinent and unnecessary.[28] He further argues that writing these irrelevant words or expressions after or amidst the names of candidates voids the ballot for being marked.[29] He adds that a ballot bearing an irrelevant epithet after the name of a candidate should also be invalidated.[30]

Cundangan likewise assails the alleged validation of two ballots which Chua had claimed. He said that the two ballots should not have been considered in Chua's favor, because a perusal of both ballots would show that his name was more clearly written than that of Chua.[31]

For his part, Chua argues that the said ballots were validated by COMELEC En Banc, because they are valid ballots in the first place, there being no grounds to invalidate them. He likewise points out that Cundangan even admitted in his petition that the COMELEC has the required expertise and authority for determining the validity of votes.[32]

In our view, the validity of the questioned ballots should be upheld. As found after the scrutiny of the COMELEC, the 89 contested ballots could not have been WBOP, considering that there were differences in how particular letters in each of the said ballots were written.[33] The four ballots are likewise not marked ballots because the mere presence of the words papag, kalabasa and bangus in the said ballots does not instantaneously make them marked ballots. For the said ballots to be considered marked ballots, it must clearly appear that the said words were deliberately placed thereon to serve as identification marks. In this case, there was no showing of the said malicious intent.[34]

The COMELEC likewise correctly counted the two claimed ballots in favor of Chua by reason of the neighborhood rule, [35] considering that the name of Chua was written on the first space for Kagawads and that the space for Punong Barangay was left blank.[36]

Anent the final ground, we find that Cundangan's allegation, that the COMELEC En Banc did not squarely rule on the issue regarding the existence of spurious and fake ballots that were found during the revision of ballots in the trial court, is clearly without basis. As explicitly stated in the assailed COMELEC En Banc Resolution, the ballot boxes of Precincts Nos. 498A/500A, 505A/506A, 507A/507A1, 510A, and 510A1/512A1 contained some tampered ballots; while the ballot box of Precinct No. 503A/504A does not contain any tampered, fake or spurious ballots, or ballots with forged Board of Election Inspector initials.[37]

WHEREFORE, the petition is DENIED for lack of merit. The assailed Resolutions of the COMELEC are hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., Nachura, and Reyes, JJ., concur.

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[1] Rollo, pp. 50-118.

[2] Id. at 119-134.

[3] Id. at 12-16.

[4] Id. at 128; 15 ballots of precinct 505A/506A were found by the COMELEC En Banc to have been written by one person.

[5] Id. at 129; 24 ballots of precinct 510A were found by the COMELEC En Banc to have been written by one person.

[6] Id. at 216-217.

[7] Id. at 25-26.

[8] Id. at 220.

[9] G.R. No. 116246, April 27, 1995, 243 SCRA 706.

[10] Id. at 712. Rollo, pp. 220-221.

[11] Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, . . . the use of two or more kinds of writing . . . shall not invalidate the ballot.

[12] G.R. No. 144197, December 13, 2000, 347 SCRA 681.

[13] Id. at 687.

[14] Rollo, pp. 222-223.

[15] Any ballot which clearly appears to have been filled by two distinct persons before it was deposited in the ballot box during the voting is totally null and void.

[16] No. L-21135, November 8, 1963, 9 SCRA 472.

[17] Id. at 479.

[18] Rollo, pp. 74-77.

[19] Id. at 28.

[20] Id. at 223.

[21] G.R. No. 160130, April 14, 2004, 427 SCRA 701.

[22] Id. at 708.

[23] Punzalan v. Commission on Elections, G.R. No. 126669, April 27, 1998, 289 SCRA 702, 716.

[24] Supra note 12.

[25] Id. at 691.

[26] Rollo, pp. 32-34.

[27] Id. at 32.

[28] Id. at 34.

[29] Fausto v. Villarta, 53 Phil. 166, 168 (1929).

[30] Protacio v. De Leon, supra note 16, at 481.

[31] Rollo, p. 35.

[32] Id. at 224.

[33] Id. at 77-95.

[34] Id. at 103.

[35] Id. at 108; A vote for a position written near the line/space for such position which is left vacant is valid for such candidate.

[36] Id. at 108 and 112. See also Ferrer v. Commission on Elections, G.R. No. 139489, April 10, 2000, 330 SCRA 229, 234.

[37] Id. at 126-131.

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